

## **SECOND SUBSTITUTE BILL MEMORANDUM**

TO: Members, Appropriations Committee

FROM: Thamas Osborn, Senior Counsel  
Commerce & Gaming Committee

RE: Proposed Second Substitute House Bill 1645 (H-2602.2 /15)  
By Representative Cody

DATE: April 7, 2015

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### **Brief summary of substitute bill:**

- Creates a statutory framework for the regulation of commerce in vapor products, including provisions related to: (a) licensing; (b) product safety warnings and disclosures; (c) packaging requirements; (d) Internet sales; (e) and other provisions intended to prevent minors from having access to vapor products.
- Creates licensing requirements for vapor products distributors and retailers.
- Grants broad rule-making authority to the Liquor Control Board (LCB) and the Department of Health regarding the regulation of commerce in vapor products.

### **The proposed second substitute makes the following changes to the substitute bill:**

- Strikes provisions authorizing licensed vapor products retailers to allow customers to taste vapor products prior to purchase.
- Prohibits the retail sale and shipment of vapor products where the sales transaction is conducted through the Internet or by mail order, and prescribes regulatory sanctions and criminal penalties for noncompliance. Strikes bill provisions authorizing qualifying domestic and out-of-state manufacturers, distributors, and retailers to conduct retail sales of vapor products through the Internet or by mail order.
- Strikes provisions creating the Dedicated Tobacco and Vapor Products Enforcement Account.
- Increases the revenue going to the Youth Tobacco and Vapor Products Prevention Account by requiring that additional fees and funds derived from monetary penalties be deposited into the account.
- Strikes provisions preempting local governments from imposing additional regulations or restrictions on vapor products. Authorizes local governments to impose additional restrictions on the sale, purchase, use, or promotion of vapor products.
- Prohibits a person from engaging in the distribution or sale of vapor products without a license.
- Requires that vapor products licensees allow LCB officers to enter and inspect any place or vehicle where vapor products are sold, stored, transported, or handled.
- Increases the annual licensing fee for vapor products retailers from ninety three dollars to two hundred fifty dollars.
- Increases the annual licensing fee for cigarette retailers from ninety three dollars to two hundred fifty dollars.

1 AN ACT Relating to youth substance use prevention associated with  
2 tobacco and drug delivery e-cigarettes and vapor products; amending  
3 RCW 26.28.080, 28A.210.310, 70.155.010, 70.155.020, 70.155.030,  
4 70.155.050, 70.155.070, 70.155.140, 70.155.080, 70.155.090,  
5 70.155.100, 70.155.110, 70.155.120, 70.155.130, and 82.24.530; adding  
6 new sections to chapter 70.155 RCW; creating new sections;  
7 prescribing penalties; and providing an effective date.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

9 NEW SECTION. **Sec. 1.** (1) The legislature finds that the  
10 availability and use of nicotine vapor inhalation products, such as  
11 e-cigarettes, e-devices, and vape pens, have increased dramatically  
12 in recent years, and that the use of such products has become  
13 commonplace in this state on the part of both adults and youth. The  
14 low cost of e-cigarettes and nicotine liquids for vapor products, as  
15 compared to cigarettes, is a key factor with respect to the  
16 popularity of such products. Despite the increasing popularity of  
17 vapor products and the resultant rapid expansion of the vapor  
18 products market, commerce in such products is wholly unregulated and  
19 is not subject to the legal requirements regarding youth access,  
20 public health disclosures, licensing, or taxation, applicable to  
21 commerce in cigarettes and other tobacco products.

1 (2) The potential public health risks posed by vapor products are  
2 many-faceted, and include nicotine addiction, liquid nicotine  
3 poisoning, the potential inhalation of carcinogens and toxic  
4 substances, and the adverse effects of nicotine on adolescent brain  
5 development. When exposed to heat, the nicotine solutions used in  
6 vapor products can generate a range of chemical byproducts that may  
7 have adverse health consequences when inhaled. The specific chemistry  
8 of the liquid nicotine solutions used in vapor products is not  
9 standardized and neither manufacturers nor retailers are required to  
10 disclose the chemical contents of the solutions. Consumers,  
11 therefore, have no way of determining exactly what substances they  
12 are inhaling or what the health consequences of such inhalation might  
13 be.

14 (3) When absorbed through the skin liquid nicotine may be toxic  
15 to both adults and children. In Washington, poison center calls  
16 related to vapor products have increased from two in 2010 to one  
17 hundred forty-four in the first nine months of 2014, ninety-seven of  
18 which involved children. Of the calls involving children, eighty-four  
19 percent were one to three years old. However, due to the current lack  
20 of regulation, vapor products manufacturers, distributors, and  
21 retailers are not subject to labeling and advertising requirements or  
22 other regulations designed to provide consumers with product safety  
23 warnings or other health-related information.

24 (4) The current easy access to vapor products is particularly  
25 problematic with respect to teenagers. A study conducted by the  
26 Centers for Disease Control and Prevention (CDC) reported that in  
27 2013 more than a quarter of a million youth who had never smoked a  
28 cigarette had used vapor products. The CDC also noted that in 2011  
29 this number was seventy-nine thousand, which increased to more than  
30 two hundred sixty-three thousand in 2013, thus reflecting a more than  
31 threefold increase in the number of youth using vapor products during  
32 this three-year period. Such statistics underscore the urgent need  
33 for the creation of a comprehensive regulatory framework governing  
34 commerce in vapor products, especially with respect to restricting  
35 access to such products by children and teenagers. It is well-  
36 understood that the ability to make rational decisions regarding  
37 risky behaviors such as smoking cigarettes and drinking alcohol is  
38 less developed in teenagers as compared to adults, and our legal  
39 system has traditionally responded by protecting teenagers from such  
40 risks through the restriction or prohibition of teen involvement in

1 such activities. As is the case with commerce in cigarettes and  
2 alcohol, the vapor products market requires regulatory oversight that  
3 focuses upon preventing children and teenagers from accessing and  
4 using products that can cause addiction and other adverse health  
5 consequences.

6 (5) Although it is clear that commerce in vapor products should  
7 be subject to stringent regulatory controls, the development of a  
8 regulatory framework must be tempered by an awareness of the  
9 potential for creating an illegal black market in vapor products. If  
10 regulatory measures related to licensing and taxation unduly restrict  
11 the development of the market, and thus cause extreme increases in  
12 retail prices, then the stage will be set for the emergence of a  
13 black market similar to that experienced by the cigarette industry.

14 (6) The legislature finds, therefore, that this act is necessary  
15 to protect the public health, safety, and welfare by preventing youth  
16 from having access to addictive vapor products, ensuring that  
17 consumers have accurate information about potentially dangerous  
18 products, and protecting the public from nicotine poisoning.

19 **Sec. 2.** RCW 26.28.080 and 2013 c 47 s 1 are each amended to read  
20 as follows:

21 (1) ~~((Every))~~ A person who sells or gives, or permits to be sold  
22 or given, to ~~((any))~~ a person under the age of eighteen years any  
23 cigar, cigarette, cigarette paper or wrapper, tobacco in any form, or  
24 a vapor product is guilty of a gross misdemeanor.

25 (2) It ~~((shall be no))~~ is not a defense to a prosecution for a  
26 violation of this section that the person acted, or was believed by  
27 the defendant to act, as agent or representative of another.

28 (3) For the purposes of this section, "vapor product" ~~((means a  
29 noncombustible tobacco derived product containing nicotine that  
30 employs a mechanical heating element, battery, or circuit, regardless  
31 of shape or size, that can be used to heat a liquid nicotine solution  
32 contained in cartridges. Vapor product does not include any product  
33 that is regulated by the United States food and drug administration  
34 under chapter V of the federal food, drug, and cosmetic act))~~ has the  
35 same meaning as provided in RCW 70.155.010.

36 **Sec. 3.** RCW 28A.210.310 and 1997 c 9 s 1 are each amended to  
37 read as follows:

1 (1) To protect children in the public schools of this state from  
2 exposure to the addictive substance of nicotine, each school district  
3 board of directors (~~((shall))~~) must have a written policy mandating a  
4 prohibition on the use of all tobacco products and vapor products on  
5 public school property.

6 (2) The policy in subsection (1) of this section (~~((shall))~~) must  
7 include, but not be limited to, a requirement that students and  
8 school personnel be notified of the prohibition, the posting of signs  
9 prohibiting the use of tobacco products and vapor products, sanctions  
10 for students and school personnel who violate the policy, and a  
11 requirement that school district personnel enforce the prohibition.  
12 Enforcement policies adopted in the school board policy (~~((shall be))~~)  
13 are in addition to the enforcement provisions in RCW 70.160.070.

14 (3) For purposes of this section, "vapor product" means any: (a)  
15 Device that employs a battery or other mechanism to heat a solution  
16 or substance to produce a vapor or aerosol intended for inhalation;  
17 (b) cartridge or container of a solution or substance intended to be  
18 used with or in such a device or to refill such a device; or (c)  
19 solution or substance intended for use in such a device, including,  
20 but not limited to, concentrated nicotine. "Vapor product" includes  
21 any electronic cigarettes, electronic nicotine delivery systems,  
22 electronic cigars, electronic cigarillos, electronic pipes, vape  
23 pens, or similar products or devices, as well as any parts that can  
24 be used to build such products or devices. "Vapor product" does not  
25 include any drug, device, or combination product approved for sale by  
26 the United States food and drug administration that is marketed and  
27 sold for such approved purpose.

28 **Sec. 4.** RCW 70.155.010 and 2009 c 278 s 1 are each amended to  
29 read as follows:

30 The definitions (~~((set forth))~~) in this section and RCW 82.24.010  
31 ~~((shall apply to this chapter. In addition, for the purposes of this~~  
32 ~~chapter, unless otherwise required by the context:))~~ apply throughout  
33 this chapter unless the context clearly requires otherwise.

34 (1) "Board" means the Washington state liquor control board.

35 (2) "Concentrated nicotine" means any solution or substance with  
36 a nicotine concentration greater than ten milligrams per milliliter.

37 (3) "Department" means the department of health.

38 (4) "Distributor" means a distributor as defined in RCW  
39 82.26.010.

1       (5) "Internet" means any computer network, telephonic network, or  
2 other electronic network.

3       ~~((+3))~~ (6) "Manufacturer" means any person, including but not  
4 limited to a repacker or relabeler, who manufactures, fabricates,  
5 assembles, processes, or labels a vapor product or who imports a  
6 finished vapor product for sale or distribution into the United  
7 States.

8       (7) "Minor" refers to an individual who is less than eighteen  
9 years old.

10       ~~((+4))~~ (8) "Packaging" means a pack, box, carton, wrapping, or  
11 container of any kind in which a vapor product is sold or offered for  
12 sale to a consumer.

13       (9) "Person" means any natural person, partnership, firm, joint  
14 stock company, corporation, or other legal entity, including an  
15 employee of any such entity.

16       (10) "Retailer" means any person engaged in the business of  
17 selling tobacco products or vapor products to ultimate consumers.

18       (11) "Sale" means any transfer, exchange, or barter, in any  
19 manner or by any means, for consideration, and includes all sales  
20 made by any person. "Sale" includes a gift by a person engaged in the  
21 business of selling tobacco products or vapor products for  
22 advertising, promoting, or as a means of evading the provisions of  
23 this chapter.

24       (12) "Sample" means a tobacco product distributed to members of  
25 the general public at no cost or at nominal cost for product  
26 promotion purposes.

27       ~~((+5))~~ (13) "Sampling" means the distribution of samples to  
28 members of the public.

29       ~~((+6))~~ (14) "Tobacco product" means a product that contains  
30 tobacco and is intended for human use, including ~~((any product))~~  
31 "cigarettes" defined in RCW 82.24.010~~((+2))~~ or "tobacco products"  
32 defined in RCW 82.26.010~~((+1))~~, except that for the purposes of RCW  
33 70.155.140 only, "tobacco product" does not include cigars defined in  
34 RCW 82.26.010 as to which one thousand units weigh more than three  
35 pounds.

36       (15) "Vapor product" means any: (a) Device that employs a battery  
37 or other mechanism to heat a solution or substance to produce a vapor  
38 or aerosol intended for inhalation; (b) cartridge or container of a  
39 solution or substance intended to be used with or in such a device or  
40 to refill such a device; or (c) solution or substance intended for

1 use in such a device, including, but not limited to, concentrated  
2 nicotine. "Vapor product" includes any electronic cigarettes,  
3 electronic nicotine delivery systems, electronic cigars, electronic  
4 cigarillos, electronic pipes, vape pens, or similar products or  
5 devices, as well as any parts that can be used to build such products  
6 or devices. "Vapor product" does not include any drug, device, or  
7 combination product approved for sale by the United States food and  
8 drug administration that is marketed and sold for such approved  
9 purpose.

10 **Sec. 5.** RCW 70.155.020 and 1993 c 507 s 3 are each amended to  
11 read as follows:

12 A person who holds a license issued under RCW 82.24.520 ~~((or))~~,  
13 82.24.530 ~~((shall))~~, or section 23 of this act must:

14 (1) Display the license or a copy in a prominent location at the  
15 outlet for which the license is issued; and

16 (2)(a) Display a sign concerning the prohibition of tobacco  
17 product and vapor product sales to minors.

18 (b) Such sign ~~((shall))~~ must:

19 ~~((a))~~ (i) Be posted so that it is clearly visible to anyone  
20 purchasing tobacco products or vapor products from the licensee;

21 ~~((b))~~ (ii) Be designed and produced by the department of health  
22 to read: "THE SALE OF TOBACCO PRODUCTS AND VAPOR PRODUCTS TO PERSONS  
23 UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER  
24 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT OR A  
25 VAPOR PRODUCT; PHOTO ID REQUIRED"; and

26 ~~((c))~~ (iii) Be provided free of charge by the ~~((liquor~~  
27 ~~control))~~ board.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.155  
29 RCW to read as follows:

30 A person who holds a license issued under chapter 82.24 or 82.26  
31 RCW or section 23 of this act must conduct the business and maintain  
32 the premises in compliance with Titles 9 and 9A RCW and chapter 69.50  
33 RCW.

34 **Sec. 7.** RCW 70.155.030 and 1994 c 202 s 1 are each amended to  
35 read as follows:

36 Unless preempted by federal law, no person ~~((shall))~~ may sell or  
37 permit to be sold any tobacco product or vapor product through any

1 device that mechanically dispenses tobacco products or vapor products  
2 unless the device is located fully within premises from which minors  
3 are prohibited or in industrial worksites where minors are not  
4 employed and not less than ten feet from all entrance or exit ways to  
5 and from each premises. The board (~~((shall))~~) must adopt rules that  
6 allow an exception to the requirement that a device be located not  
7 less than ten feet from all entrance or exit ways to and from a  
8 premises if it is architecturally impractical for the device to be  
9 located not less than ten feet from all entrance and exit ways.

10 **Sec. 8.** RCW 70.155.050 and 2006 c 14 s 3 are each amended to  
11 read as follows:

12 (~~((1))~~) Unless preempted by federal law, no person may engage in  
13 the business of sampling tobacco products or vapor products.

14 (~~((2) A violation of this section is a misdemeanor.))~~

15 **Sec. 9.** RCW 70.155.070 and 1993 c 507 s 8 are each amended to  
16 read as follows:

17 No person (~~((shall))~~) may give or distribute vapor products,  
18 cigarettes, or other tobacco products to a person by a coupon if such  
19 coupon is redeemed in any manner that does not require an in-person  
20 transaction in a retail store.

21 **Sec. 10.** RCW 70.155.140 and 2009 c 278 s 2 are each amended to  
22 read as follows:

23 (1) A person may not:

24 (a) Ship or transport, or cause to be shipped or transported, any  
25 tobacco product or vapor product ordered or purchased by mail or  
26 through the internet to anyone in this state other than a licensed  
27 wholesaler, distributor, or retailer; or

28 (b) With knowledge or reason to know of the violation, provide  
29 substantial assistance to a person who is in violation of this  
30 section.

31 (2) This section does not prohibit shipping, selling, or  
32 transporting, or causing to be sold, shipped, or transported,  
33 concentrated nicotine ordered or purchased by mail or through the  
34 internet to a person who:

35 (a) Is engaged in business in this state;



1       **(b) Has a documented commercial or industrial need for**  
2 **concentrated nicotine that is not related to the sale, distribution,**  
3 **or manufacture of vapor products; and**

4       **(c) Receives a waiver from the board.**

5       **(3)(a)** A person who knowingly violates subsection (1) of this  
6 section is guilty of a class C felony, except that the maximum fine  
7 that may be imposed is five thousand dollars.

8       (b) In addition to or in lieu of any other civil or criminal  
9 remedy provided by law, a person who has violated subsection (1) of  
10 this section is subject to a civil penalty of up to five thousand  
11 dollars for each violation. The attorney general, acting in the name  
12 of the state, may seek recovery of the penalty in a civil action in  
13 superior court. For purposes of this subsection, each shipment or  
14 transport of tobacco products or vapor products constitutes a  
15 separate violation.

16       (~~(+3)~~) **(4)** The attorney general may seek an injunction in  
17 superior court to restrain a threatened or actual violation of  
18 subsection (1) of this section and to compel compliance with  
19 subsection (1) of this section.

20       (~~(+4)~~) **(5)** Any violation of subsection (1) of this section is  
21 not reasonable in relation to the development and preservation of  
22 business and is an unfair and deceptive act or practice and an unfair  
23 method of competition in the conduct of trade or commerce in  
24 violation of RCW 19.86.020. Standing to bring an action to enforce  
25 RCW 19.86.020 for violation of subsection (1) of this section lies  
26 solely with the attorney general. Remedies provided by chapter 19.86  
27 RCW are cumulative and not exclusive.

28       (~~(+5)~~) **(6)(a)** In any action brought under this section, the  
29 state is entitled to recover, in addition to other relief, the costs  
30 of investigation, expert witness fees, costs of the action, and  
31 reasonable attorneys' fees.

32       (b) If a court determines that a person has violated subsection  
33 (1) of this section, the court (~~shall~~) **must** order any profits,  
34 gain, gross receipts, or other benefit from the violation to be  
35 disgorged and paid to the state treasurer for deposit in the general  
36 fund.

37       (~~(+6)~~) **(7)** Unless otherwise expressly provided, the penalties or  
38 remedies, or both, under this section are in addition to any other  
39 penalties and remedies available under any other law of this state.

1        NEW SECTION.    **Sec. 11.**    A new section is added to chapter 70.155  
2    RCW to read as follows:

3        (1) Subject to the provisions of this section, the board, in  
4    consultation with the department, must adopt rules regarding vapor  
5    product labeling and advertising disclosure requirements. These rules  
6    must address requirements regarding product health and safety  
7    warnings and the disclosure of the ingredients contained in vapor  
8    products that are advertised or offered for sale in this state.

9        (2) Prior to the adoption of the rules required under this  
10   section, the board and the department must jointly conduct a study  
11   that includes:

12        (a) The identification of the chemicals and substances commonly  
13   found in the liquids contained in vapor products;

14        (b) The identification of the chemicals and substances contained  
15   in the vapors or aerosols emitted from vapor products;

16        (c) The determination of whether any of the chemicals or  
17   substances contained within, or emitted from, vapor products contain  
18   toxins or carcinogens, or otherwise pose a risk to public health and  
19   safety; and

20        (d) Any other matter relating to potential health risks posed by  
21   the use of vapor products, as determined by the board and the  
22   department.

23        (3) In conducting the study, the board and the department must  
24   consult with the following:

25        (a) Scientists, physicians, researchers, academics, or other  
26   professionals with expertise relevant to the understanding of the  
27   design, operation, and/or health effects of vapor products;

28        (b) Public health professionals and organizations;

29        (c) Vapor product manufacturers, distributors, and/or retailers;

30        (d) Governmental representatives; and

31        (e) Other individuals or entities with relevant expertise, as  
32   determined by the board and the department.

33        (4) Upon completion of the study, and prior to the adoption of  
34   the rules authorized under this section, the board must prepare a  
35   written report regarding the results of the study and containing  
36   findings and recommendations regarding vapor product labeling and  
37   advertising requirements. The report must be submitted to the  
38   governor and the appropriate committees of the legislature not later  
39   than December 1, 2015.

1        NEW SECTION.    **Sec. 12.**    A new section is added to chapter 70.155  
2    RCW to read as follows:

3        (1) Unless preempted by federal law, the board is authorized to  
4    promulgate rules regulating the chemical composition of the liquids  
5    contained in vapor products, including substances included for  
6    flavoring purposes. In developing such rules the board must consult  
7    with the department.

8        (2) Upon request by the board or the department, either the  
9    manufacture or the distributor of a vapor product must provide the  
10   board with a list of all substances, and their relative proportions,  
11   contained in the liquid contents of the product.

12       (3) The board may prohibit the sale of vapor products that  
13   contain or emit chemicals or substances, other than nicotine, that  
14   pose a substantial threat to public health and safety.

15       NEW SECTION.    **Sec. 13.**    A new section is added to chapter 70.155  
16   RCW to read as follows:

17       (1) No person may offer a tobacco product or a vapor product for  
18   sale in an open, unsecured display that is accessible to the public  
19   without the intervention of a store employee.

20       (2) This section does not apply to a person licensed under RCW  
21   82.24.520, 82.24.530, or section 23 of this act if access to the  
22   licensed premises is restricted to individuals who are eighteen years  
23   of age or older.

24       NEW SECTION.    **Sec. 14.**    A new section is added to chapter 70.155  
25   RCW to read as follows:

26       (1) Unless preempted by federal law, any substance intended for  
27   use in a vapor product that is sold at retail in this state must  
28   satisfy the child-resistant effectiveness standards under 16 C.F.R.  
29   Sec. 1700, the poison prevention packaging act, as it existed on the  
30   effective date of this section, or such subsequent date as may be  
31   provided by the board by rule, consistent with the purposes of this  
32   section.

33       (2) A substance contained in a cartridge sold, marketed, or  
34   intended for use in a vapor product that is prefilled and sealed by  
35   the manufacturer, and not intended to be opened by the consumer, is  
36   exempt from subsection (1) of this section.

(3) A manufacturer that knowingly sells or distributes a substance intended for use in a vapor product that does not satisfy the requirements of this section is guilty of a class C felony.

(4) The provisions of this section are null and void and of no force and effect, upon the effective date of final regulations issued by the United States food and drug administration or from any other federal agency, where such regulations mandate child-resistant effectiveness standards for liquid nicotine containers.

**NEW SECTION. Sec. 15.** A new section is added to chapter 70.155 RCW to read as follows:

A person may not sell, offer for sale, or possess with intent to sell or offer for sale any vapor product within the state that contains a substance that increases the absorption of nicotine as determined by the board in consultation with the department.

**Sec. 16.** RCW 70.155.080 and 2002 c 175 s 47 are each amended to read as follows:

(1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes ~~((or))~~, tobacco products, or vapor products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80 RCW or participation in up to four hours of community restitution, or both. The court may also require participation in a ~~((smoking))~~ cessation program. This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a ~~((liquor control))~~ board, law enforcement, or local health department activity.

(2) Municipal and district courts within the state have jurisdiction for enforcement of this section.

**Sec. 17.** RCW 70.155.090 and 2006 c 14 s 4 are each amended to read as follows:

(1) Where there may be a question of a person's right to purchase or obtain tobacco products or vapor products by reason of age, the retailer or agent thereof ~~((, shall))~~ must require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: (a) ~~((Liquor control authority card of identification of~~

1 ~~a state or province of Canada; (b))~~ Driver's license, instruction  
2 permit, or identification card of a state or province of Canada;  
3 ~~((e))~~ (b) "identicard" issued by the Washington state department of  
4 licensing under chapter 46.20 RCW; ((d)) (c) United States military  
5 identification; ((e)) (d) passport; ((f)) (e) enrollment card,  
6 issued by the governing authority of a federally recognized Indian  
7 tribe located in Washington, that incorporates security features  
8 comparable to those implemented by the department of licensing for  
9 Washington drivers' licenses. At least ninety days prior to  
10 implementation of an enrollment card under this subsection, the  
11 appropriate tribal authority ((shall)) must give notice to the board.  
12 The board ((shall)) must publish and communicate to licensees  
13 regarding the implementation of each new enrollment card; or ((g))  
14 (f) merchant marine identification card issued by the United States  
15 coast guard.

16 (2) It is a defense to a prosecution under RCW 26.28.080 that the  
17 person making a sale reasonably relied on any of the officially  
18 issued identification as defined in subsection (1) of this section.  
19 The ~~((liquor control))~~ board ~~((shall))~~ must waive the suspension or  
20 revocation of a license if the licensee clearly establishes that he  
21 or she acted in good faith to prevent violations and a violation  
22 occurred despite the licensee's exercise of due diligence.

23 **Sec. 18.** RCW 70.155.100 and 2006 c 14 s 5 are each amended to  
24 read as follows:

25 (1) The ~~((liquor control))~~ board may suspend or revoke a  
26 retailer's license issued under RCW 82.24.510(1)(b) or section  
27 23(1)(b) of this act held by a business at any location, or may  
28 impose a monetary penalty as set forth in subsection (2) of this  
29 section, if the ~~((liquor control))~~ board finds that the licensee has  
30 violated RCW 26.28.080, 70.155.020(~~(, 70.155.030, 70.155.040,~~  
31 ~~70.155.050, 70.155.070, or 70.155.090))~~ through 70.155.070,  
32 70.155.090, sections 13 through 15 of this act, or 21 C.F.R. Sec.  
33 1140.14 as it exists on the effective date of this section.

34 (2) The sanctions that the ~~((liquor control))~~ board may impose  
35 against a person licensed under RCW ~~((82.24.530))~~ 82.24.510(1)(b) or  
36 section 23(1)(b) of this act based upon one or more findings under  
37 subsection (1) of this section may not exceed the following:

1 (a) For violations of RCW 26.28.080 ~~((or))~~, 70.155.020, sections  
2 14 and 15 of this act, or 21 C.F.R. Sec. 1140.14, and for violations  
3 of RCW 70.155.040 occurring on the licensed premises:

4 (i) A monetary penalty of ~~((one))~~ two hundred dollars for the  
5 first violation within any ~~((two))~~ three-year period;

6 (ii) A monetary penalty of ~~((three))~~ six hundred dollars for the  
7 second violation within any ~~((two))~~ three-year period;

8 (iii) A monetary penalty of ~~((one))~~ two thousand dollars and  
9 suspension of the license for a period of six months for the third  
10 violation within any ~~((two))~~ three-year period;

11 (iv) A monetary penalty of ~~((one))~~ three thousand ~~((five~~  
12 ~~hundred))~~ dollars and suspension of the license for a period of  
13 twelve months for the fourth violation within any ~~((two))~~ three-year  
14 period;

15 (v) Revocation of the license with no possibility of  
16 reinstatement for a period of five years for the fifth or more  
17 violation within any ~~((two))~~ three-year period;

18 (b) For violations of section 6 of this act, suspension or  
19 revocation of the license;

20 (c) For violations of RCW 70.155.030, a monetary penalty in the  
21 amount of ~~((one))~~ two hundred dollars for each day upon which such  
22 violation occurred;

23 ~~((c) For violations of RCW 70.155.040 occurring on the licensed~~  
24 ~~premises;~~

25 ~~(i) A monetary penalty of one hundred dollars for the first~~  
26 ~~violation within any two-year period;~~

27 ~~(ii) A monetary penalty of three hundred dollars for the second~~  
28 ~~violation within any two-year period;~~

29 ~~(iii) A monetary penalty of one thousand dollars and suspension~~  
30 ~~of the license for a period of six months for the third violation~~  
31 ~~within any two-year period;~~

32 ~~(iv) A monetary penalty of one thousand five hundred dollars and~~  
33 ~~suspension of the license for a period of twelve months for the~~  
34 ~~fourth violation within any two-year period;~~

35 ~~(v) Revocation of the license with no possibility of~~  
36 ~~reinstatement for a period of five years for the fifth or more~~  
37 ~~violation within any two-year period;))~~

38 (d) For violations of RCW 70.155.050 or section 13 of this act, a  
39 monetary penalty in the amount of ~~((three))~~ six hundred dollars for  
40 each violation;

1 (e) For violations of RCW 70.155.070, a monetary penalty in the  
2 amount of ~~((one))~~ two thousand dollars for each violation.

3 (3) The ~~((liquor control))~~ board may impose a monetary penalty  
4 upon any person other than a licensed cigarette or vapor product  
5 retailer if the ~~((liquor control))~~ board finds that the person has  
6 violated RCW 26.28.080, 70.155.020(~~((, 70.155.030, 70.155.040,~~  
7 ~~70.155.050, 70.155.070, or 70.155.090))~~ through 70.155.070,  
8 70.155.090, or sections 13 through 15 of this act.

9 (4) The monetary penalty that the ~~((liquor control))~~ board may  
10 impose based upon one or more findings under subsection (3) of this  
11 section may not exceed the following:

12 (a) For violations of RCW 26.28.080 (~~((or 70.155.020, fifty))~~),  
13 70.155.020, or sections 14 and 15 of this act, one hundred dollars  
14 for the first violation and ~~((one))~~ two hundred dollars for each  
15 subsequent violation;

16 (b) For violations of RCW 70.155.030, ~~((one))~~ two hundred dollars  
17 for each day upon which such violation occurred;

18 (c) For violations of RCW 70.155.040, ~~((one))~~ two hundred dollars  
19 for each violation;

20 (d) For violations of RCW 70.155.050 or section 13 of this act,  
21 ~~((three))~~ six hundred dollars for each violation;

22 (e) For violations of RCW 70.155.070, ~~((one))~~ two thousand  
23 dollars for each violation.

24 (5) The ~~((liquor control))~~ board may develop and offer a class  
25 for retail clerks and use this class in lieu of a monetary penalty  
26 for the clerk's first violation.

27 (6) The ~~((liquor control))~~ board may issue a cease and desist  
28 order to any person who is found by the ~~((liquor control))~~ board to  
29 have violated or intending to violate the provisions of this chapter,  
30 RCW 26.28.080 (~~((or))~~), 82.24.500, or section 23 of this act, requiring  
31 such person to cease specified conduct that is in violation. The  
32 issuance of a cease and desist order (~~((shall))~~) does not preclude the  
33 imposition of other sanctions authorized by this statute or any other  
34 provision of law.

35 (7) The ~~((liquor control))~~ board may seek injunctive relief to  
36 enforce the provisions of RCW 26.28.080 (~~((or))~~), 82.24.500, section 23  
37 of this act, or this chapter. The ~~((liquor control))~~ board may  
38 initiate legal action to collect civil penalties imposed under this  
39 chapter if the same have not been paid within thirty days after  
40 imposition of such penalties. In any action filed by the ~~((liquor~~

~~control~~) board under this chapter, the court may, in addition to any other relief, award the (~~liquor control~~) board reasonable attorneys' fees and costs.

(8) All proceedings under subsections (1) through (6) of this section (~~shall~~) must be conducted in accordance with chapter 34.05 RCW.

(9) The (~~liquor control~~) board may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter where the elements of proof are inadequate or where there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a retailer. Further, the board may exceed penalties set forth in this chapter based on aggravating circumstances.

**Sec. 19.** RCW 70.155.110 and 1993 c 507 s 12 are each amended to read as follows:

(1) The (~~liquor control~~) board (~~shall~~) must, in addition to the board's other powers and authorities, have the authority to enforce the provisions of this chapter and RCW 26.28.080(~~(4) and~~), 82.24.500, and section 23 of this act. The (~~liquor control~~) board (~~shall have~~) has full power to revoke or suspend the license of any retailer (~~or~~), distributor, or wholesaler in accordance with the provisions of RCW 70.155.100.

(2) The (~~liquor control~~) board and the board's (~~authorized agents~~) enforcement officers or employees (~~shall~~) have full power and authority to enter any place of business where tobacco products or vapor products are sold for the purpose of enforcing the provisions of this chapter.

(3) For the purpose of enforcing the provisions of this chapter and RCW 26.28.080(~~(4) and~~), 82.24.500, and section 23 of this act, a peace officer or enforcement officer of the (~~liquor control~~) board who has reasonable grounds to believe a person observed by the officer purchasing, attempting to purchase, or in possession of tobacco products or vapor products is under the age of eighteen years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. Further, tobacco products or vapor products possessed by persons under the age of eighteen years of age are considered contraband and may be seized by a peace officer or enforcement officer of the (~~liquor control~~) board.



1       (4) The (~~liquor control~~) board may work with local county  
2 health departments or districts and local law enforcement agencies to  
3 conduct random, unannounced(~~(r)~~) inspections to assure compliance.

4       **Sec. 20.** RCW 70.155.120 and 1993 c 507 s 13 are each amended to  
5 read as follows:

6       (1) The youth tobacco and vapor products prevention account is  
7 created in the state treasury. All fees collected pursuant to RCW  
8 82.24.520 (~~(and)~~), 82.24.530, 82.26.160, 82.26.170, section 23 of  
9 this act, and section 24 of this act and funds collected by the  
10 (~~liquor control~~) board from the imposition of monetary penalties  
11 (~~(and samplers' fees shall)~~) under chapters 82.24 and 82.26 RCW and  
12 this chapter must be deposited into this account, except that ten  
13 percent of all such fees and penalties (~~(shall)~~) must be deposited in  
14 the state general fund.

15       (2) Moneys appropriated from the youth tobacco and vapor products  
16 prevention account to the department (~~(of health shall)~~) must be used  
17 by the department (~~(of health)~~) for implementation of this chapter,  
18 including collection and reporting of data regarding enforcement and  
19 the extent to which access to tobacco products and vapor products by  
20 youth has been reduced.

21       (3) The department (~~(of health shall)~~) must enter into  
22 interagency agreements with the (~~liquor control~~) board to pay the  
23 costs incurred, up to thirty percent of available funds, in carrying  
24 out its cigarette, tobacco product, and vapor product enforcement  
25 responsibilities under this chapter and chapters 82.24 and 82.26 RCW.  
26 Such agreements (~~(shall)~~) must set forth standards of enforcement,  
27 consistent with the funding available, so as to reduce the extent to  
28 which tobacco products and vapor products are available to  
29 individuals under the age of eighteen. The agreements (~~(shall)~~) must  
30 also set forth requirements for data reporting by the (~~liquor~~  
31 ~~control~~) board regarding its enforcement activities.

32       (4) The department (~~(of health)~~), the board, and the department  
33 of revenue (~~(shall)~~) must enter into an interagency agreement for  
34 payment of the cost of administering the tobacco and vapor product  
35 retailer licensing system and for the provision of quarterly  
36 documentation of tobacco and vapor product wholesaler, retailer, and  
37 vending machine names and locations.

38       (5) The department (~~(of health shall)~~) must, within up to seventy  
39 percent of available funds, provide grants to local health

1 departments or other local community agencies to develop and  
2 implement coordinated tobacco and vapor product intervention  
3 strategies to prevent and reduce ((~~tobacco~~)) use by youth.

4 **Sec. 21.** RCW 70.155.130 and 1993 c 507 s 14 are each amended to  
5 read as follows:

6 (1) This chapter preempts political subdivisions from adopting or  
7 enforcing requirements for the licensure and regulation of tobacco  
8 product promotions and sales within retail stores, except that  
9 political subdivisions that have adopted ordinances prohibiting  
10 sampling by January 1, 1993, may continue to enforce these  
11 ordinances. No political subdivision may:

12 ((~~(1)~~)) (a) Impose fees or license requirements on retail  
13 businesses for possessing or selling cigarettes or tobacco products,  
14 other than general business taxes or license fees not primarily  
15 levied on tobacco products; or

16 ((~~(2)~~)) (b) Regulate or prohibit activities covered by RCW  
17 70.155.020 through 70.155.080. This chapter does not otherwise  
18 preempt political subdivisions from adopting ordinances regulating  
19 the sale, purchase, use, or promotion of tobacco products not  
20 inconsistent with chapter 507, Laws of 1993.

21 (2) Nothing in this chapter preempts a political subdivision from  
22 imposing additional restrictions on the sale, purchase, use, or  
23 promotion of vapor products.

24 NEW SECTION. **Sec. 22.** A new section is added to chapter 70.155  
25 RCW to read as follows:

26 The board, in consultation with the department, may adopt rules  
27 to implement and enforce the requirements of this chapter.

28 NEW SECTION. **Sec. 23.** A new section is added to chapter 70.155  
29 RCW to read as follows:

30 (1) The licenses issuable by the board under this chapter are as  
31 follows:

32 (a) A vapor products distributor's license; and

33 (b) A vapor products retailer's license.

34 (2) Application for the licenses must be made through the  
35 business licensing system under chapter 19.02 RCW. The board may  
36 adopt rules regarding the regulation of the licenses. The board may  
37 refuse to issue any license under this chapter if the board has

1 reasonable cause to believe that the applicant has willfully withheld  
2 information requested for the purpose of determining the eligibility  
3 of the applicant to receive a license, or if the board has reasonable  
4 cause to believe that information submitted in the application is  
5 false or misleading or is not made in good faith. In addition, for  
6 the purpose of reviewing an application for a distributor's license  
7 or retailer's license and for considering the denial, suspension, or  
8 revocation of any such license, the board may consider criminal  
9 conduct of the applicant, including an administrative violation  
10 history record with the board and a criminal history record  
11 information check within the previous five years, in any state,  
12 tribal, or federal jurisdiction in the United States, its  
13 territories, or possessions, and the provisions of RCW 9.95.240 and  
14 chapter 9.96A RCW do not apply to such cases. The board may, in its  
15 discretion, issue or refuse to issue the distributor's license or  
16 retailer's license, subject to the provisions of section 29 of this  
17 act.

18 (3) No person may qualify for a distributor's license or a  
19 retailer's license under this section without first undergoing a  
20 criminal background check. The background check must be performed by  
21 the board and must disclose any criminal conduct within the previous  
22 five years in any state, tribal, or federal jurisdiction in the  
23 United States, its territories, or possessions. If the applicant or  
24 licensee also has a license issued under chapter 66.24, 82.24, or  
25 82.26 RCW, the background check done under the authority of chapter  
26 66.24, 82.24, or 82.26 RCW satisfies the requirements of this  
27 subsection.

28 (4) Each license issued under this chapter expires on the  
29 business license expiration date. The license must be continued  
30 annually if the licensee has paid the required fee and complied with  
31 all the provisions of this chapter and the rules of the board adopted  
32 pursuant to this chapter.

33 (5) Each license and any other evidence of the license required  
34 under this chapter must be exhibited in each place of business for  
35 which it is issued and in the manner required for the display of a  
36 business license.

37 (6) License issuances and renewals are subject to board authority  
38 and the rules adopted under the board including, but not limited to,  
39 rights of cities, towns, county legislative authorities, the public,

1 churches, schools, and public institutions that object to or prevent  
2 issuance of licenses.

3 NEW SECTION. **Sec. 24.** A new section is added to chapter 70.155  
4 RCW to read as follows:

5 (1)(a) No person may engage in or conduct business as a  
6 distributor or retailer in this state without a valid license issued  
7 under this chapter, except as otherwise provided by law. Any person  
8 who sells vapor products to persons other than ultimate consumers or  
9 who meets the definition of "distributor" under this chapter must  
10 obtain a distributor's license under this chapter. Any person who  
11 sells vapor products to ultimate consumers must obtain a retailer's  
12 license under this chapter.

13 (b) A violation of this subsection (1) is punishable as a class C  
14 felony according to chapter 9A.20 RCW.

15 (2) No person engaged in or conducting business as a distributor  
16 or retailer in this state may refuse to allow the enforcement  
17 officers of the board, on demand, to make full inspection of any  
18 place of business or vehicle where any of the vapor products  
19 regulated under this chapter are sold, stored, transported, or  
20 handled, or otherwise hinder or prevent such inspection. A person who  
21 violates this subsection (2) is guilty of a gross misdemeanor.

22 (3) Any person licensed under this chapter as a distributor, and  
23 any person licensed under this chapter as a retailer, may not operate  
24 in any other capacity unless the additional appropriate license is  
25 first secured, except as otherwise provided by law. A violation of  
26 this subsection (3) is a misdemeanor.

27 (4) The penalties provided in this section are in addition to any  
28 other penalties provided by law for violating the provisions of this  
29 chapter or the rules adopted under this chapter.

30 NEW SECTION. **Sec. 25.** A new section is added to chapter 70.155  
31 RCW to read as follows:

32 A fee of six hundred fifty dollars must accompany each vapor  
33 products distributor's license application or license renewal  
34 application under section 23 of this act. If a distributor sells or  
35 intends to sell vapor products at two or more places of business,  
36 whether established or temporary, a separate license with a license  
37 fee of one hundred fifteen dollars is required for each additional  
38 place of business.

1        NEW SECTION.    **Sec. 26.**    A new section is added to chapter 70.155  
2    RCW to read as follows:

3        A fee of two hundred fifty dollars must accompany each vapor  
4    products retailer's license application or license renewal  
5    application under section 23 of this act. A separate license is  
6    required for each separate location at which the retailer operates.

7        **Sec. 27.**    RCW 82.24.530 and 2012 2nd sp.s. c 4 s 12 are each  
8    amended to read as follows:

9        A fee of ((~~ninety-three~~)) two hundred fifty dollars must  
10   accompany each retailer's license application or license renewal  
11   application. A separate license is required for each separate  
12   location at which the retailer operates. A fee of thirty additional  
13   dollars for each vending machine must accompany each application or  
14   renewal for a license issued to a retail dealer operating a cigarette  
15   vending machine. An additional fee of ninety-three dollars ((~~shall~~))  
16   must accompany each application or renewal for a license issued to a  
17   retail dealer operating a cigarette-making machine.

18       NEW SECTION.    **Sec. 28.**    A new section is added to chapter 70.155  
19    RCW to read as follows:

20        (1) Every vapor products retailer licensed under section 23 of  
21   this act must procure itemized invoices of all vapor products  
22   purchased. The invoices must show the seller's name and address, the  
23   date of purchase, and all prices and discounts.

24        (2) The retailer must keep at each retail outlet copies of  
25   complete, accurate, and legible invoices for that retail outlet or  
26   place of business. All invoices required to be kept under this  
27   section must be preserved for five years from the date of purchase.

28        (3) At any time during usual business hours the department,  
29   board, or its duly authorized agents or employees may enter any  
30   retail outlet without a search warrant, and inspect the premises for  
31   invoices required to be kept under this section and the vapor  
32   products contained in the retail outlet, to determine whether or not  
33   all the provisions of this chapter are being fully complied with. If  
34   the department, board, or any of its agents or employees are denied  
35   free access or are hindered or interfered with in making the  
36   inspection, the registration certificate issued under RCW 82.32.030  
37   of the retailer at the premises is subject to revocation by the  
38   department, and any licenses issued under this chapter or chapter

1 82.26 or 82.24 RCW are subject to suspension or revocation by the  
2 board.

3 NEW SECTION. **Sec. 29.** A new section is added to chapter 70.155  
4 RCW to read as follows:

5 (1) The board must enforce this chapter. The board may adopt,  
6 amend, and repeal rules necessary to enforce this chapter.

7 (2) The department may adopt, amend, and repeal rules necessary  
8 to administer this chapter. The board may revoke or suspend the  
9 distributor's or retailer's license of any distributor or retailer of  
10 vapor products in the state upon sufficient cause showing a violation  
11 of this chapter or upon the failure of the licensee to comply with  
12 any of the rules adopted under it.

13 (3) A license may not be suspended or revoked except upon notice  
14 to the licensee and after a hearing as prescribed by the board. The  
15 board, upon finding that the licensee has failed to comply with any  
16 provision of this chapter or of any rule adopted under it, must, in  
17 the case of the first offense, suspend the license or licenses of the  
18 licensee for a period of not less than thirty consecutive business  
19 days, and in the case of a second or further offense, suspend the  
20 license or licenses for a period of not less than ninety consecutive  
21 business days but not more than twelve months, and in the event the  
22 board finds the licensee has been guilty of willful and persistent  
23 violations, it may revoke the license or licenses.

24 (4) Any licenses issued under chapter 82.24 or 82.26 RCW to a  
25 person whose license or licenses have been suspended or revoked under  
26 this section must also be suspended or revoked during the period of  
27 suspension or revocation under this section.

28 (5) Any person whose license or licenses have been revoked under  
29 this section may reapply to the board at the expiration of one year  
30 of the license or licenses. The license or licenses may be approved  
31 by the board if it appears to the satisfaction of the board that the  
32 licensee will comply with the provisions of this chapter and the  
33 rules adopted under it.

34 (6) A person whose license has been suspended or revoked may not  
35 sell vapor products, tobacco products, or cigarettes or permit vapor  
36 products, tobacco products, or cigarettes to be sold during the  
37 period of suspension or revocation on the premises occupied by the  
38 person or upon other premises controlled by the person or others or  
39 in any other manner or form.

1 (7) Any determination and order by the board, and any order of  
2 suspension or revocation by the board of the license or licenses  
3 issued under this chapter, or refusal to reinstate a license or  
4 licenses after revocation is reviewable by an appeal to the superior  
5 court of Thurston county. The superior court must review the order or  
6 ruling of the board and may hear the matter de novo, having due  
7 regard to the provisions of this chapter and the duties imposed upon  
8 the board.

9 (8) If the board makes an initial decision to deny a license or  
10 renewal, or suspend or revoke a license, the applicant may request a  
11 hearing subject to the applicable provisions under Title 34 RCW.

12 NEW SECTION. **Sec. 30.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 31.** If any part of this act is found to be in  
17 conflict with federal requirements that are a prescribed condition to  
18 the allocation of federal funds to the state, the conflicting part of  
19 this act is inoperative solely to the extent of the conflict and with  
20 respect to the agencies directly affected, and this finding does not  
21 affect the operation of the remainder of this act in its application  
22 to the agencies concerned. Rules adopted under this act must meet  
23 federal requirements that are a necessary condition to the receipt of  
24 federal funds by the state.

25 NEW SECTION. **Sec. 32.** This act takes effect October 1, 2015.

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